Supreme Court, U.S.
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89-1137

Case No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

LYNN RANNELS
(Petitioner)

v.

MERIDIAN BANCORP, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION OF CERTIORARI

Petitioner, pro se

Lynn Rannels
RD #2 Box 191
Reinholds, Pennsylvania
17569
Ph 215-484-4685

QUESTION PRESENTED

Can a bank functioning as a member of the Federal Reserve and Federal Deposit Insurance Corporation solicit and accept time deposits from private individuals and pay different interest rates in reference to the depositors age?

When these "age related interest payments" were challenged in Federal Court, did the plaintiff receive due process when: (1) the defendant bank was granted summary judgment in their favor, despite the fact that their attorney never mentioned the challenged banking activity in his responsive briefs, motions or oral arguments. (2) both the district and appeals courts judges*1 allegedly applied federal law to the questoned banking activity while never mentioning it in their opinion or orders?

*1 Judge Van Antwerpen in the United States District Court for the Eastern Distric of Pennsylvania and Judges Higginbotham, Mansmann and Cowen in United States Court of Appeals for the Third Circuit.

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OPINIONS BELOW

A reprint of the August 8, 1989 opinion and order issuing summary judgment against the Petitioner by the District Court for the Eastern District of Pennsylvania is contained in the attached appendix starting on page "A1".

A judgment order to affirm this summary judgment was issued without opinion on December 21, 1989 by the United States Court of Appeals for the Third Circuit. A reprint of this judgment order, for which review is sought, is also contained in the attached appendix on page "A14".

BASIS OF FEDERAL JURISDICTION

Because the district court's grant for summary judgment is a final decision, appellate jurisdiction is conferred by 28 USC ss 1291.

The judgment order of the Third Circuit Court of Appeals was issued on December 21, 1989; On January 4, 1990 Judge Higginbotham entered an order to stay mandate extending the time for the filing of this petition to March 12, 1990. The jurisdiction of this Court is conferred by 28 USC ss 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, whithout **due process** of law; nor deny to any person within its jurisdiction the **equal protection** of the laws.

STATEMENT OF THE CASE

The equal protection question presented challenges the practice of a Federal Reserve and FDIC member bank arbitrarily using a depositors age in determining the rate of interest they receive on their time deposits. Council for the defendant bank, Daniel B. Huyett, IV, argued that banks are private businesses and not subject to claims under 42 USC ss 1983. His arguments were evasive and did not respond to the challenged activity of "age related interest payments."

From the perspective of interest bearing time deposits, state action exists. A Federal Reserve member bank is defined as a "Depository and Financial Agent of the Government" under 31 CFR ss 202. The FDIC has unique status but is in fact an agency of the United States Governmet. See Rausher Pierce Refsnes, Inc.v FDIC, 789 F 2d. 210 (5th Cir. 1986). The defendant bank's membership in the FDIC is a member-

ship in a government agency created to promote individual confidence in savings institutions and encourage deposits.

Judge Van Antwerpen in his opinion (appendix, p.A9) indicated that even if the defendant bank were a state actor it would be accomplishing a state objective and not in violation of 42 USC ss 1983. His opinion ignores the fact that neither U.S. Savings Bonds, nor any type of federal, state, or municiple bond makes "age related interest payments" to investors or depositors. Neither the defendant bank's status as a state actor or its accomplishing a state objective was tested from its capacity as a depository institution.

The Petitioner, in his original complaint outlined and submitted exhibits concerning "age related interest payments" made by the defendant bank functioning as a member of the Federal Reserve and FDIC. The question of due process is a result of the Petitioner having summary judgment entered

against him by the district court and later affirmed by the court of appeals without either court directing inquiry towards or even mentioning the challenged bahking activity.

The district court allowed defense attorney, Daniel B. Huyett, IV, who happens to be the son of a judge sitting in this same court, to proceed without mentioning the challenged "age related interest payments" in his briefs, motions, or oral arguments. District court records verify the fact that neither the defense attorney or the court itself mentioned the challenged banking activity prior to issuing summary judgment against the Petitioner. The United States Court of Appeals for the Third Circuit affirmed this judgment without comment. (opinion and orders reprinted in attached appendix)

BASIS FOR ORIGINAL FEDERAL JURISDICITION

Because the contested activity originated under the equal protection clause of the Fourteenth Amendment of the United States Constitution, subject matter jurisdiction was originally conferred by 28 USC ss 1343.

REASONS FOR GRANTING THE WRIT

Both the district court and the court of appeals have approved "age related interest payments" by granting and affirming summary judgment against this Petitioner's civil complaint. These lower courts have decided an important and uprecedented question of federal law despite the fact they never applied federal law to or ever mentioned the questioned banking practice in their opinion or orders.

It has been previously cited that both the Federal Reserve and the FDIC are agencies of the United States Government. It is appropriate that this Court determine if a bank's involvement in financial activities directly resulting from their membership in these government agencies constitutes state action. And if state action exists, are "age related interest payments" on time deposits rationally related to a state objective?

A second issue appropriate for this Court to determine is if the Petitioner has received due process of law in that summary judgment was entered and affirmed against him without the courts addressing or ever mentioning the cause of action challenged in his complaint.

CONCLUSION

Wherefore, the petitioner respectfully prays that a writ of certiorari be granted.

Lynn Rannels
Petitioner, pro se
RD#2 Box 191
Reinholds, Penna.
17569
PH 215-484-4685

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IN THE UNTIED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNN RANNELS : CIVIL ACTION

V. : NO. 89-4487

MERIDIAN BANCORP, INC. : FILED AUG 8,1989

OPINION AND ORDER

VAN ANTWERPEN, J. August 8, 1989

Plaintiff has filed a pro se complaint alleging that defendant's "Club 50" program, which provides discounts on various services to those who are 50 years or older, unconstitutionally discriminates against those who are under age 50. Specifically, plaintiff claims that the program violates the equal protection clause of the Fourteenth Amendment. In the instant matter, defendant moves for dismissal or in the alternative for summary judgment. Defendant argues that the complaint fails to allege that Meridian's conduct constitutes state action, and even if there were state action, the conduct is

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rationally related to a legitimate purpose and thus does not violate the constitution.*1 We agree with defendant.

Because we will consider matters outside the pleadings, we will treat defendant's motion as a motion for summary judgment. See Castle v. Cohen, 840 F.2d 173, 179 (3d Cir. 1988).*2 Fed.R. Civ. P. 56(c) instructs a court to enter summary judgment when the record reveals that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." This rule provides the court with a useful tool when the critical facts are undisputed, facilitating the resolution of a pending controversy without the expense and delay of conducting a trial made unnecessary by the absence of factual dispute. Peterson v. Lehigh Valley District Council,676 F. 2d 81, 84(3d Cir. 1982); Goodman v. Mead Johnson & Co., 534 F. 2d 566 (3d Cir. 1976), cert. denied, 429 U.S.1038 (1977).

Summary judgment is inappropriate, however, where the evidence before the court reveals a genuine factual disagreement requiring submission to a jury. An issue is "genuine" only if the evidence is such that a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). At the summary judgment stage, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for for trial." Id. at 249.

In a summary judgment action, the moving party bears the initial burden of identifying for the court those portions of the record which it believes demonstrate the absence of a material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Following such a showing in a case where the non-moving party is the plaintiff and therefore bears the burden of proof, it must by affidavits or by the depositions

and admissions on file " make a showing sufficient to establish the existence of [every] element essential to that party's case." Id. at 322. In making its ruling on a summary judgment motion, the court must view all inferences in a light most favorable to the non-moving party, United States v. Diebolo, Inc.,369 U.S. 654, 655 (1962); Continental Insurance So. v. Bodie, 682 F.2d 436 (3d Cir. 1982),must resolve all doubts against the moving party, Gans v. Mundy, 762 F.2d 338,341 (3d Cir. 1985). Cert. denied, 474 U.S. 1010 (1985), and must take as true all allegations of the non-moving party that conflict with those of the movant. see Anderson, 477 U.S. at 255.

The Fourteenth Amendment circumscribes "only such action as may fairly be said to be that of the States." Shelley v. Kraemer, 334 U.S. 1, 13 (1948). The Fourteenth Amendment "erects no shield against merely private conduct, however

discriminatory or wrongful." Id. In his complaint, plaintiff fails to allege any state action.*3 In his response to defendant's motion, however, plaintiff asserts that

> Club 50 financial services are in fact extensively regulated by both state and federal authorities. These very regulations promote consumer and depositor confidence tantamount to dealing with the state itself. A portion of the gross profits obtained through this consumer confidence as well as the defendants's dual pricing and interest rates is ultimately used to purchase FDIC insurance....The defendant also functions as a key component for the Federal Reserve Board in its monetary control policies. The relationship between the defendant and state action is so extensive and direct that the plaintiff considered it unnecessary to provide extensive detail in his complaint.

We must now determine whether these assertions, assuming they were made part of the complaint, can establish state action.

In Blum v. Yaretsky, 457 U.S. 991, 1004 (1982), the Court analyzed the question of state acion by focusing on three factors. First to establish state action, the plaintiff must show that " there is a sufficiently close nexus between the

state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the state itself." Blum 457 U.S. at 1004 (quoting Jackson v. Metropolitan Edison Co.,419 U.S. 345, 351 (1974). Second, for a court to consider a private decision state action, the state must exercise coercive power or provide such significant encouragement such that the choice must be deemed to be that of the state. Id. Third, state action may be found where a private entity has exercised powers that are traditionally the exclusive prerogative of the state. Id. at 1005. "The mere fact that a business is subjected to state regulation does not by itself convert its action into that of the state for purposes of the Fourteenth Amendment." Jackson, 419 U.S. at 350 (electric utility's acts are not state action even though it enjoys state-granted monopoly and is subject to extensive state protection and regulation).

SEE ALSO RENDELL-BAKER V. KOHN, 457 U.S. 830 (1982) (IN 42 U.S.C. ss 1983 action, #4 private school director not acting under color of state law despite extensive governmental regulation of the school; although school performs function that serves public, its function not traditionally the exclusive prerogative of the state).

It is clear that Meridian Club 50 program can not consititute state action. Meridian is 100% owned by private shareholders. (Yeager Affidavit [[3-5) Meridian does not use government land or buildings, and is not dependant on government funds. (Yeager Affidavit [[6). Club 50 was created for private purposes without any influence from a governmental entity. (Brittain Affidavit [[5-6). Furthermore, courts have uniformly held that conduct by banks is not state aciton. See Morast v. Lance, 807 F. 2d 926 (11th Cir. 1987); Fletcher v. Rhode Island Hospital Trust National Bank,

496 F.2d 927 (1st Cir.), cert.denied, 419 U.S. 1001 (1974); Oller v. Bank of America, 342 F.Supp. 21 (N.D.Cal. 1972). But See Lugar v. Edmonson Oil Co.Inc. 457 U.S. 922 (1982)(where state acts in concert with bank in attaching property upon ex parte application, conduct constitutes state action). In the case at bar, plaintiff's allegations fall far short of satisfying the state action requirement. The existence of federal and state banking regulations and Meridian's purchasing FDIC insurance is not sufficient to transform the private conduct of Meridian into state action.

Even if plaintiff could sufficiently allege state action, the Club 50 program would not violate the Constitution. To decide whether particular conduct is constitutional, we must first determine the level of scrutiny to apply to the conduct. Without hesitation, it is clear that we should apply the "rational relationship"

test.*5 In Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 317-27 (1976), the Supreme Court held that because it did not consider the elderly a suspect class, the rational relationship test applied to their age discrimination cases. Naturally, courts do not afford any greater deference to those under 50.

The rational relationship test is satisfied if any set of facts may be reasonably conceived to show that the conduct bears a rational relationship to the achievement of a legitimate state interest. McGrowan v. State of Maryland, 366 U.S. 420, 425-26 (1961). The burden is on the plaintiff to show that there is no legitimate basis for the state action. Madden v. Kentucky, 309 U.S. 83, 88 (1940). Plaintiff has failed to sustain his burden. First, providing benefits to older citizens has long been recognized a legitimate state interest. For example, the tax system, the Social Security system, and the

Pennsylvania Lottery, all provide benefits to older cititzens. Second, the Club 50 program bears a rational relationship to that legitimate interest. In numerous cases, courts have upheld the constitutionality of programs that favor senior citizens. See e.g., Jefferson v. Hackney, 406 U.S. 535 (1972)(state system for allocating welfare which provided higher proportion of available funds to the aged); Acevedo v. Nassau County, New York 500 F.2d 1078 (2d Cir.1974) (abandoning housing plan for low income families, which would be occupied predominately by minorities, while continuing one for senior citizens did not deny equal protection). It is obvious that Meridian's Club 50 program can easily withstand the low level scrutiny of the rational relationship test.

In sum, the plaintiff's claims are so devoid of merit that they border on the legally frivolous and tread dangerously close to justifying Rule 11 sanctions.

We suggest that plaintiff devote his youthful energies to a cause more worthy than the denial of picayune benefits to those whom time has rendered less fortunate than he. Therefore, for the reasons adduced above, we will grant defendant's motion for summary judgment.

The appropriate Order follows.

(footnotes)

*1. Defendant also argues that we should dismiss the complaint solely because, as required by F.R.Civ.P. 8(a)(1), it does not state grounds upon which the court's jurisdiction depends. Because we construe pro se pleadings liberally, see Haines v. Kerner, 404 U.S. 519 (1972), we will not dismiss plaintiff's complaint on such a technicality. If we were to deny defendant's motion to dismiss, we would allow plaintiff an opportunity to amend his complaint to reflect the jurisdictional requirements.

*2. We have notified defendant, and he has appeared before the court on August 8, 1989 for the purpose of arguing and presenting evidence in support of his position.

*3. Defendant urges us to dismiss the complaint for this reason alone. Again, because this is a pro se matter, we will be more forgiving and assume that plaintiff's complaint reflects the position he propounds in his brief.

(footnotes continued)

*4 The ss1983 "color of state law" requirement is tested the same as the Fourteenth Amendment's "state action" requirement. Rendell-Baker, 457 U.S. at 838.

*5 "Strict scrutiny" analysis is reserved for state action that involves either a suspect classification or a fundamental right. Murgia, 427 U.S. at 312 n.3. Middle level scrutiny is applied only to classifications based on sex. See Craig v.Borden, 429 U.S. 190 (1976)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNN RANNELS	:	CIVIL ACTION
	:	
V.	:	
	:	
MERIDIAN BANCORP, INC.	:	NO. 89-4487

ORDER

VAN ANTWERPEN, J.

AND NOW, this 8th day of August, 1989, after hearing oral argument, and upon consideration of MOTION TO DISMISS OR MOTION FOR SUMMARY JUDGMENT, filed by defendant on July 13, 1989, and RESPONSE thereto, filed by plaintiff on July 19, 1989, it is hereby ORDERED that defendant's motion for summary judgment is Granted. Judgment is entered in favor of Meridian Bancorp., Inc. and against Lynn Rannels.

BY THE COURT

Franklin S. Van Antwerpen, J.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 89-1742

RANNELS, LYNN
(Appellant)

v.

MERIDIAN BANCORP INC.

Appeal from the United States District Court for the Eastern District of Pennsylvania
(D.C. Civil Action No. 89-4487)
Dist. Judge: Hon. Franklin S. Van Antwerpen

Submitted Under Third Circuit Rule 12(6)
November 29, 1989

before HIGGINBOTHAM, MANSMANN and COWEN, Circuit Judges.

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby AFFIRMED.

Costs taxed against appellant.

BY THE COURT

(A. Leon Higginbotham)
Circuit Judge

Attest:

Sally Mrvos, Clerk

DEC 21 1989

CERTIFICATE OF SERVICE

The undersigned pro se Petitioner of this Court, hereby certifies that three true and correct copies of this PETITION OF CERTIORARI (appendix attached) were serverd upon the council for the Appelle/cross Petitioner by mailing the same on the___day of January, 1990, via 1st. class mail postage prepaid to:

Daniel B. Huyett,IV, Esq.
STEVENS & LEE
607 Washington St.
PO Box 679
Reading, Pa. 19603-0679

_____
Lynn Rannels